CIVIL RIGHTS DIVISION OF THE U.S. DEPARTMENT OF JUSTICE

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION

OF THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

MARCH 2, 2004

Serial No. 66

Printed for the use of the Committee on the Judiciary

Available via the World Wide Web: http://www.house.gov/judiciary

U.S. GOVERNMENT PRINTING OFFICE

92–346 PDF WASHINGTON : 2004

For sale by the Superintendent of Documents, U.S. Government Printing Office
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CIVIL RIGHTS DIVISION OF THE U.S. DEPARTMENT OF JUSTICE

TUESDAY, MARCH 2, 2004

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE CONSTITUTION,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to call, at 1:05 p.m., in Room 2141, Rayburn House Office Building, Hon. Steve Chabot (Chair of the Subcommittee) presiding.

Mr. CHABOT. The Committee will come to order. This afternoon the Subcommittee on the Constitution convenes to review the progress of the Civil Rights Division of the Department of Justice for the purpose of the reauthorization of the Department.

The Division has been in the forefront of protecting the civil rights of all Americans since it was created all the way back in 1957. The Division's role in this effort is to enforce laws prohibiting discrimination on the basis of race, sex, handicap, religion, and national origin.

The Civil Rights Division lists many important accomplishments as well as new efforts to combat discrimination in areas as diverse as education, employment, housing, lending, public accommodations, and voting. I know the new Assistant Attorney General has worked hard to create strong policies and affirmatively develop initiatives to further the important work of the Division.

Beginning in 2001, the Division added 52 new positions, which has allowed it to expand its work related to enforcement of the Americans with Disabilities Act, the Civil Rights of Institutionalized Persons Act, also known as CRIPA, the Voting Rights Act, and its Trafficking in Persons Program. As a result, the Division has opened 38 CRIPA investigations since 2001, which represents a 90 percent increase over the 20 investigations initiated over the preceding 3 years. The Division has authorized seven unemployment discrimination or employment discrimination lawsuits since November of 2003. Six have been filed so far in 2004. And in fiscal year 2004, the Division has opened 49 investigations of alleged employment discrimination by State and local government.

The Division has prosecuted 122 human traffickers, double the number of prosecutions as under the previous Administration. The Division has 146 pending human trafficking investigations, and since 2001 has resolved over 1,000 disability-related complaints, at least 354 through informal means, 131 through formal settlement agreements, and 13 with consent decrees, and over 500 through mediation.

Finally, on November 4, 2003, 160 Federal observers and 39 Civil Rights Division personnel went to 15 counties in 8 States to monitor State and local elections. These activities go hand-in-hand with the Voting Access and Integrity Initiative created by the Attorney General in October of 2001. The department-wide initiative is helping to enhance the Department's ability to deter discrimination and election fraud, and ability to prosecute violators vigorously so that all Americans will have access to the voting process.

I also wanted to highlight the Division's continuing work related to the terrorist attacks of September 11th, 2001, and incidents of discriminatory backlash. Since September 11, 2001, the Division, the FBI, and the U.S. Attorneys' offices have investigated 546 incidents of backlash discrimination.

As a result of these investigations, Federal charges have been brought in 13 cases against 18 defendants. All have been convicted. In addition, the Department has contributed to approximately 121 backlash prosecutions in Federal, State and local courts since September of 2001. Further, more than 250 town and community meetings have been held on backlash issues, and best practices have been developed for law enforcement to prevent and respond to hate incidents against Arab Americans, Muslims, and Sikhs.

I know that Members of our Subcommittee will have questions important to them regarding specific cases and policies. I look forward to hearing your testimony and the answers to all of our questions. It is important for the Division to continue to play an important role in safeguarding the civil rights of all Americans. We all look forward to examining the Division's work over the past year this afternoon, and we welcome you here this afternoon, Assistant Attorney General Acosta.

[The prepared statement of Mr. Chabot follows:]

PREPARED STATEMENT OF THE HONORABLE STEVE CHABOT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

This afternoon the Subcommittee on the Constitution convenes to review the progress of the Civil Rights Division of the Department of Justice for the purpose of the reauthorization of the Department.

The Division has been in the forefront of protecting the civil rights of all Americans since it was created in 1957. The Division's role in this effort is to enforce laws prohibiting discrimination on the basis of race, sex, handicap, religion, and national origin. The Civil Rights Division lists many important accomplishments as well as new efforts to combat discrimination in areas as diverse as education, employment, housing, lending, public accommodations, and voting. I know the new Assistant Attorney General has worked hard to create strong policies and affirmatively develop initiatives to further the important work of the Division.

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Mr. CHABOT. And I will now refer to my Ranking Member Mr. Nadler of New York for the purpose of making an opening statement.

Mr. NADLER. Thank you, Mr. Chairman.

Mr. Chairman, I want to join you in welcoming Assistant Attorney General Acosta, and to commend you for scheduling this important and timely oversight hearing.

The protection of fundamental civil rights is one of the hallmarks of the American experiment. Without effective protection of our civil rights, many Americans would remain consigned to the margins of our society and unable to fulfill the promise of this great Nation.

The ideal of equality and freedom has too often been more an aspiration than a reality for too many of our citizens. Indeed the history of the United States is reflected in ongoing struggles to make good on the promises made in the Declaration of Independence and the Bill of Rights for everyone. In fact, you can very well read the history of this country as a history of the expanding of the understanding of what was meant in the Declaration of Independence when it was said that all men are created equal.

In 1776, by all men, they certainly didn't mean African Americans, they didn't mean women, they didn't mean Native Americans, they probably didn't even mean men without property. And the history of this country, to a large extent, is a history of struggle to expand the meaning to encompass all different groups in our society.

That struggle continues today, and we have much more to do before it is realized. In advancing that cause, the Civil Rights Division has a crucial role to play in the enforcement of these rights under the law. As such, the Division holds a sacred trust in the fulfillment of our Nation's core values. How well it exercises that trust is the subject of today's hearing.

I look forward to the testimony of the witness and to the opportunity to engage in a dialogue with our witness. And I thank you again, Mr. Chairman.

Mr. CHABOT. Thank you.

Mr. NADLER. I ask for a unanimous consent statement, Mr. Chairman.

Mr. CHABOT. Without objection.

Mr. NADLER. Mr. Chairman, I ask unanimous consent that all Members have 5 legislative days to submit additional questions in writing to Mr. Acosta for written responses for the record.

Mr. CHABOT. Without objection, so ordered.

Mr. CONYERS. Mr. Chairman?

Mr. CHABOT. Yes. The gentleman from Michigan is recognized.

Mr. CONYERS. Thank you very much. I would like to strike the requisite number of words and make an opening statement.

Mr. CHABOT. The gentleman is recognized for 5 minutes.

Mr. CONYERS. Thank you, Mr. Chairman.

Now, we have several problems, Mr. Acosta, that I hope you can address. One is the Texas redistricting issue. The second are the absence of compliance agreements in the pattern and practices in law enforcement cases. And the third is the Tulia, Texas, incident in which we have a very unclear record of what the Civil Rights Division did in that area.

Now, my comments are dealing with the Division, and there are a number of staff and trial attorneys that I want to commend for the work that they are doing, but we have the issue of partisan politics infecting the work in the Civil Rights Division, from hiring to substantive decision-making. And I think that this problem lays directly at your feet.

Now, it is—one of the great questions of Federal governance is to why you recused yourself from the Texas redistricting case, and I am hoping that you will take some time to make it clear, to tell us what was going on. The Texas preclearance was incredible.

Here we have, for the first time that I remember, a Majority Leader of the Congress from Texas goes back to Texas, announcing, as it were, that the districting plan entered into by the—drawn up by the judges is unuseful, unhelpful, and that he has a better idea. I mean, this is incredible. If everybody starts doing that, it is hard to tell where the electoral system of Members of Congress is going to end up. But the plan which has now been enacted eliminated three effective minority opportunity districts, and all seven minority-influenced districts. As the Texas delegation stated on numerous occasions, the plan has a devastating effect on diluting the voting strength of more than 3.5 million Latinos and African Americans across that State.

Now, you know how many times you have been—that you have elected to recuse yourself and, to my knowledge, have never provided a public response, not even to the letters that I have sent you, and probably lots of other people as well. Your departure left the Civil Rights Division with no minorities whatsoever, from management to line attorney, participating in the section 5 review of the Texas plan. Moreover, your decision left the Voting Section under the supervision of two political—two deputies, unconfirmed, political to the core, one of whom is in this room now, both of whom lack strong experience in the substantive law, and one of whom possesses serious enough political baggage to merit disqualification from participating in this matter under Department conflict regulations. So I hope you can understand how the scenario of uncon-

firmed political appointees making one of the most significant section 5 determinations since the enactment of the Voting Rights Act raises serious concerns that the review would be politicized.

And when you review the results as I have, those suspicions were justified. And the clear signal of their objection to the nature of the process, the chief of the Voting Rights Section of the Civil Rights Division did not sign the no-objection letter for the Texas plan.

So I hope you can explain this to the Committee. Why did you flee the process? I hope you can tell us when we will receive a substantive response to my letter going back to December 23, 2003, requesting a copy of the recommendation memorandum prepared by the career staff of the Voting Section in the Texas congressional case and the other States that were subject to review.

The actions of the Division in Texas and other section 5 matters require the vigorous oversight by this Committee to protect the integrity and meaning of the Voter Rights Act itself. The other body has already entertained amendments that would extend section 5 in its current form. Before moving forward in this area, faced with a 2007 deadline, this body must determine whether the current statutory scheme is adequate or needs improvement.

In our November 25 letter to Attorney General Ashcroft, we noted that prior to the retirement of James Turner as Career Deputy Assistant Attorney General for Civil Rights, it had been the practice of the Department to place the Voting Section under the supervision of the Career Deputy Assistant Attorney General, rather than one of the numerous political deputies.

And so I would ask unanimous consent, Mr. Chairman, to place the rest of my comments[1] in the record, and I thank you for the generous allotment of time that you have afforded me.

Mr. CHABOT. Without objection, that will be included in the record.

And the gentleman's time has expired.

Does the gentleman from Florida wish to make an opening statement?

Mr. FEENEY. No, thank you, Mr. Chairman.

Mr. CHABOT. Thank you.

Any other opening statements? Okay.

If not, we again welcome Mr. Acosta here this afternoon. R. Alexander Acosta was selected by President Bush to serve as Assistant Attorney General for the Civil Rights Division of the United States Department of Justice on August 22, 2003, last year.

Prior to his service as Assistant Attorney General, Mr. Acosta served as a member of the National Labor Relations Board, and has also served as Principal Deputy Assistant Attorney General in the Civil Rights Division.

After graduation from law school, he served as a law clerk on the U.S. Court of Appeals for the Third Circuit, and then worked at the Washington office of the Kirkland and Ellis law firm where he specialized in employment and labor issues.

Mr. Acosta is the first Hispanic to serve as an Assistant Attorney General at the Department of Justice. He is the 2003 recipient of the Mexican American Legal Defense in Education Fund's Excel-

[1] The material referred to was not available at the time this hearing was printed.

lence in Government Service Award, and the D.C. Hispanic Bar Association's Hugh A. Johnson, Jr., Memorial Award.

He has also taught several classes on employment law, disability-based discrimination law, and civil rights law at the George Mason School of Law, and we welcome you here for your testimony this afternoon, Mr. Acosta.

STATEMENT OF THE HONORABLE ALEXANDER ACOSTA, ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION, DEPARTMENT OF JUSTICE

Mr. ACOSTA. Thank you, Mr. Chairman, Ranking Member Nadler, Members of the Subcommittee. I want to thank you for your time this afternoon. I have a brief opening statement, if I could.

Mr. CHABOT. Yes.

Mr. ACOSTA. Thank you once again.

As Ranking Member Nadler referenced, we are primarily a litigating division. Our mission is to enforce Congress' civil rights laws, and we have done so, and we have done so vigorously. The written testimony previously submitted provides an overview of some of our work, but what I would like to do this afternoon is take a few minutes to touch on a few of my personal experiences in the few months since taking office.

Since we are a litigating division, I would like to begin with two cases that I argued this January. The first case concerns a cross burning. It was a really outrageous case. The defendant pled guilty to a conspiracy of racial intimidation. The defendant welcomed a biracial couple to the neighborhood by posting a sign, a sign that read, "No trespassing, especially the N word." The defendant subsequently took a gun, walked onto this African American man's property, pointed the gun at this man, and said, "Hey, blank, I have something for you."

That wasn't enough. The defendant then went back to his neighbor's property, built a cross, waited until dusk, burned the cross while sitting in a lounge chair drinking beer. When the police arrived, he told the police, "I burned the cross to, 'let that blank know that he is not welcome here.'"

Cross burning has too long been a tool of intimidation against racial and religious minorities. It is borne of hatred. It is borne of ignorance. It is among the most ugly forms of conduct that our culture knows. Since 2001, the Civil Rights Division has prosecuted nearly 40 of these cases, 40 cases, almost 1 a month.

Well, in this case the sentencing guidelines called for a sentence of up to 2 years. The District Court judge, however, departed downward, and sentenced the individual to time served. I was and I am outraged by that decision, and that is exactly what I argued before the Courts of Appeals.

The second case concerned a case of religious discrimination. A city in Florida has told two small orthodox synagogues that they must vacate their premises, that they must remove themselves from the business district. While this city prohibits houses of worship absolutely, it allows private clubs, such as Masonic lodges. The reason the city gives is that a private club such as a Masonic lodge has social events and rituals which from a secular perspective do contribute to the economy of the business district, but that

a synagogue that has rituals and social events, the same as a Masonic lodge but led from a religious rather than a secular perspective, do not contribute sufficiently to the business district.

Well, this is wrong. Congress, in RLUIPA, overwhelmingly said it is wrong. I believe it is wrong. And I argued that case personally before the Court of Appeals as well.

In addition to these cases, I have traveled to address and to discuss our enforcement responsibilities. This February I was privileged to attend and participate in a conference hosted by the War Against Trafficking Alliance in Mumbai.

I thought I understood what human trafficking was about. Mr. Chairman, I was wrong. I never really understood what human trafficking was about until you visit some of the places where these victims and these women are kept, the conditions in which they live. I can't find words to describe some of the conditions that I saw. Human trafficking is evil. It is nothing less than modern-day slavery. It is vile.

I want to mention a recent case just to drive home the point of what human trafficking really entails. The case concerns four Mexican women, girls actually. Some were as young as 14 years of age. They were lured to our Nation with promises of a husband and a better life. What they found instead was captivity and prostitution at a brothel in Plainfield, New Jersey. They were forced to have sex with man after man after man 7 days a week, 24 hours a day. They were never allowed to leave the brothel.

Those two criminals have now been sentenced to 17 years. These peddlers in human misery must be brought to justice. We have taken substantial steps and devoted substantial resources to ensuring that this is so. And, in fact, we have brought charges against over 130 defendants on human trafficking and related crimes.

This past week I also traveled to Albuquerque to meet with small business owners and leaders as part of our ADA Business Connection Initiative. My goal is to discuss how we can work cooperatively to build opportunities for Americans with disabilities. We vigorously enforce the ADA by litigation, but at the same time we do everything in our power to promote voluntary and cooperative compliance. Few businesses in this Nation realize that Americans with disabilities number in excess of 50 million and wield a purchasing power of $170 billion in discretionary spending per year. That is three times the purchasing power of the teenage market. Our Business Connection Initiative is just one of several initiatives that focus on spreading this message and encouraging businesses to increase access to individuals with disabilities voluntarily.

Later this week, I will be traveling to Selma. I will be traveling there to mark the anniversary of the crossing of the Edmund Pettus Bridge. I will have the privilege of sharing the stage with one of your colleagues, Congressman Lewis, where we will be attending a ground-breaking at the Center for the Selma-Montgomery National Historic Trail.

Mr. Chairman, I believe that time spent listening and hearing concerns is as important as the time I spend litigating and the time I spend speaking. Dialogue and communications with the civil rights community is an important part of my job. In the few months since I took office, I have met personally with over 200,

over 200, civil rights groups, national and local community leaders. When I travel to a city, I try to meet local leaders in that city. I am pleased at the cordial and cooperative response that I have received from all fronts during my few months on the job.

I once again thank you for the opportunity to address the Subcommittee, and I am happy to answer what questions you may have.

Mr. CHABOT. Thank you very much.

[The prepared statement of Mr. Acosta follows:]

PREPARED STATEMENT OF ALEXANDER ACOSTA

Thank you Mr. Chairman; Ranking Member Nadler; Members of the Subcommittee:

It is a pleasure to appear before you today and an honor to represent the outstanding attorneys, professionals, and staff of the Civil Rights Division of the United States Department of Justice.

I want to take this opportunity to thank my able staff and section leadership. I am privileged to lead a dedicated group of professionals and prosecutors, both at the trial and appellate levels. I am happy to report that we have executed and continue to forward our mission of protecting our nation's civil rights.

I assumed this office nearly six months ago. Preparing for this hearing has provided me an opportunity to reflect on that time and to evaluate the progress we have made.

Over that period I have been personally involved in most issues the Division faces: In addition to day-to-day management and oversight, including reviewing and authorizing the Division's enforcement decisions, I have traveled to India and to the Dominican Republic to address the problem of trafficking in humans; I have argued in two circuit courts of appeal, once on behalf of a synagogue to protect their right to worship, and once challenging a downward departure in a cross-burning case. I have met with over 200 community groups and nationally and locally recognized civil rights leaders, and have given 22 speeches on civil rights issues.

Let me begin by discussing a few areas that merit mention.

TRAFFICKING IN PERSONS

Allow me to start with our efforts to combat the scourge of trafficking in persons. Fighting human trafficking ranks among the chief priorities of this Administration at the highest levels.

The President recently made this clear before the United Nations:

> We must show new energy in fighting back an old evil. Nearly two centuries after the abolition of the transatlantic slave trade, and more than a century after slavery was officially ended in its last strongholds, the trade in human beings for any purpose must not be allowed to thrive in our time.

The Attorney General has similarly made clear his unequivocal commitment to this fight:

> Human trafficking . . . is an affront to human dignity. The Department of Justice is determined not to stand idly by while the toll in human suffering mounts. Human trafficking victims often are too young, too frightened, too trapped in their circumstances to speak for themselves. . . . We hope to be the victims' voice, to lessen the suffering, and to prosecute those who commit these crimes to the fullest extent of the law.

It is estimated that approximately 20,000 humans, mostly women and children, are smuggled into this country each year. But the sterility of this figure fails to capture the evil of human trafficking.

Human traffickers are peddlers in human misery. They seize their victims, by threat or by trick, and smuggle them across borders, often in loathsome conditions. Often they are sold from one trafficker to another, sometimes repeatedly. There, surrounded by an unfamiliar culture, a foreign language, without travel documents or identification, under threat of injury to self or loved ones at home, and generally bereft of any support, they are forced into labor or sex slavery.

We in the United States are too often unaware that trafficking occurs in our midst. We are learning now that our own quiet neighborhoods all too often silently harbor victims. One recent case in New Jersey broke in an average neighborhood: one with kids playing, with flags fluttering, and with a sign reading "safe neighbor-

hoods save lives." There, in an ordinary looking house, unbeknownst to its neighbors, was a brothel, and in that brothel were trafficked women: Four Mexican women—girls actually—some as young as 14 years of age. They were lured to the United States with promises of a husband and a better life. Instead, they found captivity and rape. They were forced to have sex with man, after man, after man, 24 hours a day, 7 days a week. The case was *United States* v. *Jimenez-Calderon*. Six principals were convicted; they received sentences of up to 17 years in prison. Nor is that case an outlier.

Additionally, in *United States* v. *Soto*, members of a smuggling ring who likewise trafficked Central American women and girls into the United States were convicted and sentenced. They held their victims in trailers, and forced them to perform menial house chores during the day, and repeatedly raped and abused them at night. When they tried to seek help, they were beaten, and ordered murdered.

These defendants too were convicted; they received sentences of up to 23 years in jail.

In *United States* v. *Kil Soo Lee*, we won sentences in the largest labor-trafficking case ever prosecuted. There, the defendants held over 250 Korean and Vietnamese women, forcing them to work without pay in a clothing factory. When the laborers complained, they were beaten so savagely that one woman lost an eye. The sentencing for Mr. Lee is pending.

Our efforts to counter this scourge are young, but successful, and growing. During fiscal years 2001 through 2003, we charged 113 traffickers—nearly a three-fold increase over the previous three years. Of these, 81 included sex-trafficking allegations. Over that period, we have opened 210 investigations into allegations of human trafficking.

In addition, this fiscal year alone we have charged 19 defendants, have incarcerated an additional eight, and have opened 40 new investigations. As of January 28, 2004, we had 146 open trafficking investigations—more than twice the number open in January 2001.

In order to fight human trafficking effectively, our law enforcement professionals must be able to recognize it, and, most importantly, must be able to recognize its victims. Let there be no mistake, they are just that. They are the kidnapped, forcibly displaced, victims of a crime. In order to assist in the identification and prosecution of these horrific crimes, we have conducted training sessions and seminars for Federal and State law enforcement officials, as well as non-governmental organizations, including the two largest such training sessions ever held.

I am confident that, with the continued dedication of our Criminal Section and law enforcement agents, we can beat back this evil.

CIVIL RIGHTS OF INSTITUTIONALIZED PERSONS

Every bit as important, and all too often every bit as shocking, are the terms and conditions of confinement we find in publicly-operated institutions in our own country. Under the Civil Rights of Institutionalized Persons Act, we are charged with protecting the rights of some of our most vulnerable citizens: those in State-run facilities for the aged and for persons with developmental disablilities, mental institutions, and juvenile justice facilities. Our Special Litigation Section investigates such institutions to identify patterns or practices that deprive residents of federally-protected constitutional or statutory rights.

By way of example, we recently issued a findings letter regarding the terms and conditions of confinement at three juvenile justice facilities in Arizona, which housed primarily non-violent teenage offenders. The results of our investigation were shocking, to say the least. We discovered credible evidence of the frequent sexual abuse of youth by both staff and other juveniles. We similarly discovered evidence of widespread non-sexual physical abuse, including unjustified physical force. Of particular concern was the recurrence of suicides at the facilities by juveniles confined there. At one institution, in a single year, three youths took their own lives. The investigation revealed inadequate suicide prevention measures and inadequately trained staff throughout the facilities. The State of Arizona has indicated its willingness to work with us to remediate these shortfalls.

In other investigations, we have found nursing home patients dead from septic shock after fecal matter built up in their impacted bowels; we have discovered incidents of staff abusing—torturing really—patients with severe mental retardation; and we have found elderly patients so neglected as to have developed bed sores that cut to the very bone.

Ordinarily, the abuses in these cases are so disturbing that once they are brought to light, the responsible jurisdiction moves quickly to address them. Unfortunately, this is not always the case.

This past December, we filed suit against the State of Mississippi, challenging the conditions of confinement at two juvenile facilities. Your colleague, Congressman Bennie Thompson, is well familiar with this matter, as he originally called it to our attention. Our investigation of these facilities revealed evidence that students were frequently subjected to physical abuse by staff, routinely shoved and hit, "hog-tied" with hands and feet bound together behind their backs, as well as "pole-shackled" with hands tied behind a pole and left on public display for hours at a time. Staff made liberal use of pepper spray, and reports indicated that when some girls were ill as a result of running in the heat, they were forced to eat their own vomit. Indeed, some juveniles, including those known to be suicidal, were stripped naked and placed in solitary confinement in a dark cell with only a drain to serve as a toilet.

This Administration has compiled an unassailable record in defending the civil rights of individuals in institutions. To date, this Administration has opened 39 new CRIPA investigations, involving 46 new facilities. By contrast, during its last three years, the prior administration opened just 19 such investigations involving 33 facilities. We have essentially doubled our enforcement effort. This Administration has issued 25 findings letters, documenting rights abuses at 34 State-operated institutions, has filed six lawsuits, and has resolved 24 matters through consent decrees and settlement agreements. During fiscal year 2003, we opened 12 CRIPA investigations covering 11 facilities, and during fiscal year 2004 we have already opened an additional 8 investigations into 8 facilities.

Over the coming year, we will continue to expand our efforts to protect rights in the areas of physical abuse of children, elder care, and provision of services in the appropriate environment, as required by Federal law. This issue is of the highest importance to me, and to my staff. These problems will not continue unchecked.

VOTING RIGHTS

The right to vote is among the most fundamental in our democracy. Protecting access to and integrity of the franchise is a top priority.

Providing access to polling places is part of this effort. We have dispatched record numbers of Federal monitors and observers to polling places around the country. During 2003, an election by-year, we still sent a total of 380 Federal observers to watch 11 elections in 13 counties in five States. We also sent 148 Department employees to monitor an additional 20 elections in 16 counties in 12 States. In 2002, we deployed a total of 829 Federal employees, 608 observers and 221 Department personnel to monitor elections in 17 States. By contrast, in 1992, the Department dispatched a total of 571 observers and monitors. During this year's general election, we anticipate similarly proactive prevention efforts.

We recognize that physical or language barriers too often discourage individuals from participating in the electoral process. Our Disability Rights Section has actively enforced Federal requirements that polling places be accessible to individuals with disabilities. Project Civic Access, which I discuss later, addresses this need. In addition, we recently issued guidance for local election officials instructing them in how to make polling places fully accessible. That information, along with much other information regarding individuals with disabilities, is available on our website, *www.ada.gov*.

We have similarly taken significant steps towards protecting the voting rights of language minorities under Section 203 of the Voting Rights Act. In July 2002, the Census Bureau determined, based on the 2000 census, that there exist 80 newly-covered jurisdictions, for a total of 296 covered jurisdictions across 30 States. We conducted an extensive outreach campaign to ensure compliance by these newly-covered jurisdictions, sending letters to all affected officials and offering substantial technical assistance. We also initiated a comprehensive review of the compliance efforts of all covered jurisdictions. We have now monitored elections in a number of covered jurisdictions across the country. Where we identified problems, we are investigating. Where appropriate, we are prepared to sue and to negotiate settlement agreements and consent decrees, to ensure that deficiencies are fixed and that language minorities receive at polling place the assistance required by law.

We likewise have begun a vigorous process of implementing the Help America Vote Act of 2002 (HAVA). Some provisions of that law took effect on January 1, 2004. Jurisdictions are now required to provide for provisional voting, provide voter information at polling places, comply with Federal rules for mail-in registration, and properly manage State-wide voter registration lists. In preparation for HAVA, we have been monitoring States' implementation efforts and have offered substantial technical assistance for over a year now. Now that those provisions have taken effect, we stand ready to enforce HAVA's requirements as needed. We intend to work

with the Election Assistance Commission to help States ensure that voters know their rights under this new law.

Our enforcement of the Voting Rights Act itself continues apace. This past year, we litigated four cases alleging violations of Section 2 of the Voting Rights Act, which prohibits vote dilution. We prevailed in three. Separately, under Section 5, we continued the department's work addressing changes in voting schemes. During calendar year 2003, we received 4,829 submissions under Section 5 of the Voting Rights Act, including 397 redistricting plans. We analyzed and returned these promptly, noting objections to five redistricting plans and two methods of election. Between April 1, 2001, when census data was released, and December 31, 2003, we reviewed 2,504 redistricting plans, five percent more than were handled during the comparable period following the 1990 census.

DISABILITY RIGHTS AND THE PRESIDENT'S NEW FREEDOM INITIATIVE

We have been particularly successful in advancing the rights of Americans with disabilities.

Let me begin with a little background. It may surprise some of you—perhaps many of you—that 50 million Americans live with some type of disability. Most of these individuals can participate fully in society, contributing to our economy, our culture and our nation. For some, however, simple tasks such as opening doors, negotiating slight slopes, or navigating crowds and enclosed spaces pose a significant, and often insurmountable, obstacle to participation.

As one of his first acts, the President ordered the Executive branch to live up to the promises the laws have made to Americans with disabilities. The New Freedom Initiative harnesses the resources and energy of all of the Executive Branch agencies whose programs affect the lives of people with disabilities. It advances accessibility and opportunity in numerous areas including employment, public accommodations, commercial facilities, information technology, telecommunications services, housing, schools, and voting.

In the President's own words:

> Wherever a door is closed to anyone because of a disability, we must work to open it. Wherever any job or home, or means of transportation is unfairly denied because of a disability, we must work to change it. Wherever any barrier stands between you and the full rights and dignity of citizenship, we must work to remove it, in the name of simple decency and simple justice.

In keeping with the President's challenge, we have advanced the civil rights of individuals with disabilities on a number of fronts.

Our strong record of enforcement speaks for itself. During calendar year 2003, our Disability Rights Section resolved over 350 complaints, through a combination of formal and informal means. Since 2001, they have successfully resolved over 1,000 such complaints, bringing increased access to public and private facilities, services, and accommodations. Our Housing and Civil Enforcement Section has been equally busy. During this Administration, it has filed 23 lawsuits enforcing the accessible design and construction provisions of the Fair Housing Act. The Housing Section has similarly targeted discrimination against group homes for individuals with disabilities, and housing providers employing policies designed to bar individuals with disabilities.

Both the Disability Rights and the Appellate Sections have been busy pursuing ongoing litigation regarding accessibility to stadium style seating theaters. The Supreme Court may well address this issue in the near future.

Even more prolific than our litigation efforts has been our Americans with Disabilities Act (ADA) mediation program. During fiscal year 2003 alone, we referred over 2,000 complainants to the program, of which 77 percent were successfully resolved. We increasingly find that complainants actively seek mediation. This bears out the Attorney General's repeated statements that through alternative dispute resolution we can achieve more justice, at less cost, without the antagonism and delays of litigation.

Litigation and mediation, alone, however, are ineffective strategies for securing civil rights. Rather than wait for violations to occur, we must be proactive. Accordingly, through the New Freedom Initiative we are pursuing several initiatives aimed at spreading awareness of accessibility requirements, easing regulatory burdens, and securing voluntary compliance.

Through Project Civic Access, we are working cooperatively with a host of local governments to bring their civic spaces and public services into compliance. Municipalities operate important public facilities, such as court houses, police stations, jails, libraries, municipal buildings, theaters, voter registration locations, land

record offices, and the like. Rather than approach accessibility at these locations piecemeal, as individual facilities draw complaints, we work proactively with municipalities to develop a comprehensive plan to bring all their civic spaces into compliance. To date, we have entered agreements with 60 separate cities and towns.

Through the ADA Business Connection program, we are reaching out to the business community, and in particular to the small business community, to educate them as to accessibility issues and the opportunities available in working with the disability community. Small businesses, in particular, often violate accessibility requirements simply because they are unaware of them. We hope to spread awareness. More generally, we hope to raise awareness of the size and market power of the disability community. As I stated earlier, over 50 million Americans live with some form of disability, a community with an aggregate income of over one trillion dollars and discretionary spending of over 170 billion. That figure is three times the purchasing power of teenagers—a prime target for advertising. As the baby boomer generation grows older, these figures will only increase. The baby boomers will increasingly seek accessible housing, easy-to-use products, and accessible environments. The business opportunities for those willing to address these needs are significant.

We have also been working with States to conform their State housing and building codes to Federal accessibility requirements. The ADA provides that once we certify a State code as being substantially equivalent to Federal accessibility guidelines, compliance with that State code will be considered prima facie evidence of compliance with the ADA. Certification is advantageous both to builders and businesses as it eases the burdens of compliance, and also for the disability community, as it increases accessibility. Within the last month, we certified Maryland's State accessibility code, and are working with a number of other States towards the same end.

Finally, we have developed a substantial outreach effort to both businesses and the disability community through our website, *www.ada.gov*, and through our toll-free hotline. Last year, we received over 25 million "hits" on the website, and assisted over 120,000 callers through our ADA hotline.

In all, I must say I am proud of our efforts to assist Americans with Disabilities. Strong enforcement, coupled with mediation, proactive prevention, compliance assistance, and regulatory simplification, is helping to ensure that the more than 50 million Americans with disabilities can contribute to, and participate fully in, our nation.

BIAS MOTIVATED AND COLOR OF LAW CRIMES

Crimes motivated by bias are among the most ugly acts we face in our profession. They are crimes motivated by little more than hate and ignorance. Whether racially motivated, such as cross or church burnings, or whether religiously motivated, such as attacks on a synagogue or a mosque, such crimes cut deeply against our national ideal of one nation, one people, without regard to such petty differences. We continue to pursue aggressively the perpetrators of bias motivated crimes.

Let me give you three recent examples of the types of crimes we are prosecuting.

In February 2003, we secured the conviction of Ernest Avants for the 1966 murder of Ben Chester White, an elderly African American farm worker in Mississippi. The defendant and others took Mr. White to a national forest, where they shot him multiple times in the body and head. For this role in this hideous offense, Avants was sentenced to life in prison. The prosecution was made possible only after we uncovered evidence that the murder had occurred in a national forest.

In another case, we indicted five white supremacists for assaulting two African Americans in a Denny's restaurant in Springfield, Missouri. One of the victims was stabbed, and suffered serious injuries. The other was threatened with the same. The victims' only "offense" was to enter the restaurant to eat with two white women.

In a third case, we indicted three men on disturbingly similar charges. According to the indictment, these individuals assaulted six Hispanic teenagers—three boys and three girls, all under age 16—who were entering a Chili's restaurant to celebrate one of their birthdays. One was beaten and stabbed so badly as to require emergency surgery to save the use of his hand.

It is hard to believe that these acts continue to occur in modern America. We will vigorously prosecute these cases, and will seek stiff criminal sanctions.

Over the past two years the most visible bias motivated crimes have been those termed "9/11 backlash" crimes—crimes committed against individuals perceived to be of Arab, Asian, or Muslim descent. Immediately following 9/11, and to a much lesser extent following the start of Operation Iraqi Freedom, we saw a spike in such incidents. Fortunately, however, after the President and the Attorney General

strongly condemned such behavior, these incidents quickly fell to near their pre-9/11 levels.

We have had tremendous success fighting these crimes. Since 9/11, in conjunction with the FBI and United States Attorneys' offices, we have investigated over 500 allegations of such bias motivated crimes. These resulted in local prosecutors initiating 125 prosecutions. In addition, the Civil Rights Division brought Federal charges in 13 cases against 18 defendants, with a 100 percent rate of conviction.

The Community Relations Service has sponsored more than 250 town meetings around the country and we have held more than 25 meetings with community leaders to address civil rights concerns. This effort will continue.

We have made a particular effort to target illegal cross burnings, a grotesque practice, used historically to terrorize and intimidate racial and religious minorities. Since 2001, we have brought 35 cross-burning prosecutions, charging a total of 50 defendants.

I personally argued one such case in the Fourth Circuit, appealing the district court's downward departure from the sentencing guidelines. In that case, *United States* v. *May*, the defendant had engaged in a pattern of racially hostile conduct towards a mixed race couple, including posting a racially explicit "No Trespassing" sign, and threatening with a handgun. This conduct culminated in a cross burning. The district court's departure would have let the defendant off essentially for time served.

The Criminal Section also prosecutes "color of law" cases—law enforcement officers who willfully and knowingly deprive individuals' of their civil rights. For instance, in *United States* v. *Waldon* we prosecuted a Sheriff's Deputy who strangled to death a businessman who he and his partner had arrested as part of a robbery scheme. And, in *United States* v. *Young*, we prosecuted a police officer who admitted to using his authority to coerce a young woman into having sex with him. Over the past three years, the Criminal Section has charged 217 officers with such crimes, as compared with 198 during the prior three-year period. These efforts will continue.

SPECIAL LITIGATION

In addition to the CRIPA work, which I discussed previously, the Special Litigation Section also devotes substantial resources to investigating, and where appropriate, prosecuting law enforcement agencies for patterns and practices of depriving individuals of their civil rights.

The overwhelming majority of law enforcement officers perform their jobs with dedication, fairness and honor. Theirs is a special trust. They take substantial risks and they deserve our respect. But with trust comes responsibility. Instances of abuse by a few damage the profession as a whole. Instances of abuse undermine our criminal justice system. When officers do transgress and abuse the public's faith and trust, and violate the clearly established constitutional rights of those they have sworn to protect, corrective action must be taken.

It is with this in mind that, working with the Special Litigation Section, we have adopted a more transparent approach for achieving solutions and remedying problematic practices. The Special Litigation Section thus strives to keep target agencies fully informed as to its findings and potential violations as the investigation proceeds. And, as the process unfolds, we work hard to resolve complaints without litigation. Our response is a graduated one, which considers the potential violations. By working with law enforcement agencies, rather than appearing only as a litigation opponent, we can achieve greater, in less time, results which are longer lasting, and with less cost and rancor. In short, we have expanded our effort to affect not only a prosecutorial, but also an instructive, role.

Let me give you a couple of examples:

First, we recently entered both a consent decree and a memorandum of understanding with Prince George's County Police Department (PGPD). Through these, the Department agreed to sweeping reforms. The agreements require widespread reform in PGPD's use of canines and force. In addition, they establish specific training requirements and accountability practices.

Most notably, the agreements will require PGPD to take the following steps: (1) reform its use of force policies, as well as its training, reporting, and accountability procedures; (2) adopt and implement a "guard and bark" methodology for canines, whereby canines will locate suspects and hold them at bay by barking loudly—use of biting is restricted to specifically delineated exigent circumstances; (3) create a special board to review all firearm discharges; (4) operate a system to manage risk regarding officer performance; (5) effectively review canine bites and other related activity; and (6) investigate and review misconduct allegations.

This structure was unique in its use of both a consent decree and memorandum of understanding. We insisted on the consent decree where court involvement was essential, and employed a memorandum of understanding where flexibility and the ability to work with the Department to craft solutions were necessary. Our approach was sufficiently creative and effective that the agreements were applauded by the city, the police force, the Fraternal Order of Police, and community groups alike. To ensure the effective implementation of the agreements, the Justice Department will continue to monitor the Prince George's County Police Department for the next three years. But, we will not be present solely as a watchdog; we also will remain involved to offer technical assistance.

The agreements resolved investigations that had been open since July 1999 and October 2000. By working with the jurisdiction towards these goals, rather than simply investigating with an eye to civil litigation, I believe we have come farther much faster than we otherwise would have.

In July 2003, we similarly reached two significant consent decrees with the city of Detroit, a city that has seen more than its fair share of policing difficulties over the years. The city and its police leadership are now working hard to implement those agreements. While the City was off to a slow start, the monitor's first quarterly report found substantial efforts in several important areas.

Our record of enforcement is impressive. We have opened 12 new such pattern or practice investigations, and are currently conducting preliminary inquiries into more than 20 additional agencies. This Administration has filed seven lawsuits against law enforcement agencies and has reached settlement agreements in 13 such suits. This compares with the two such settlements that were entered over the preceding three years.

In addition to litigation, as I indicated, we make a concerted effort to be transparent in our investigations. The ultimate purpose of our investigations is to fix the problem, not to fix the blame. Accordingly, although not required to, we now provide police agencies with extensive technical assistance. We also issue findings letters, documenting in detail our conclusions, and explaining why a particular practice may be problematic. This provides jurisdictions with a clear roadmap to compliance, which makes settlement and cooperative fixes significantly more likely.

EMPLOYMENT DISCRIMINATION

Fighting discrimination in employment has long been a core function of the Civil Rights Division, a mission that this Administration has carried on. We have fought employment discrimination on the basis of race, color, national origin, sex, disability, and religion, and will continue to do so.

For example, in January we filed a "Section 707" pattern or practice lawsuit against the City of Erie, Pennsylvania, challenging its use of an unjustified physical agility test in selecting entry-level police candidates. Since 1996, 71 percent of men had passed the test, but only 13 percent of women. Of note is the fact that the City declined to proffer any justification for this test.

And, more recently, we filed two sexual harassment employment discrimination suits. The first was against the City of Baltimore Department of Public Works under Title VII, alleging that it subjected a former female employee to a hostile work environment and failed to implement its own complaint process. In other words, the suit alleged that the former female worker was subjected repeatedly to a verbal and physical barrage of lewdness, public nudity, and pornography. The second challenged a requirement by the District of Columbia fire department that new hires for emergency medical technician positions "successfully" pass a pregnancy test, and that they not become pregnant during their first year.

We continue to fight racial discrimination in employment. Just last week, we filed an employment discrimination suit against the New Jersey University of Medicine and Dentistry, alleging failure to promote on the basis of race. In *United States* v. *Delaware* we alleged that the Delaware State Police's written examination for selecting entry-level police officers illegally discriminated against African-Americans on the basis of their race. Specifically, we asserted that the State's use of the "ALERT" exam had a disparate impact against African-Americans, was not job-related and, thus, violated Title VII. This case was tried in the United States District Court for the District of Delaware last August.

We are also awaiting a decision in another major pattern or practice race discrimination case, U.S. v. *City of Garland, Texas*. In that case we alleged that the city's use of its written examination for entry-level police officers and firefighters had a disparate impact against African-Americans and Hispanics, was not job-related and, thus, violated Title VII. As in the Delaware case, we are awaiting a decision from the court.

Our enforcement figures are substantial. So far this fiscal year we have initiated several 41 Section 707 pattern or practice investigations, investigating a series of fire departments for possible racial discrimination, and 11 Section 706 "individual violation" investigations. Moreover, I have authorized three Section 706 suits and one Section 707 suit. Historically, the Section has filed no more than one pattern or practice lawsuit per year.

In addition to the Employment Section, the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) also pursues employment discrimination specifically directed on the basis of citizenship or national origin. The Office of Special Counsel enforces the anti-discrimination provision of the Immigration and Nationality Act (INA). This mission includes (1) protecting workers' rights by investigating and resolving complaints, whether through formal or informal means; (2) engaging in public outreach and education efforts for both workers and employers through speeches, panel participation, print and web informational publications, a telephone hotline, and publicly-funded grants for the same purposes; and (3) providing inter-agency and inter-government advice and counsel on immigration employment-related issues.

In September 2003, OSC settled a charge that Triangle Services, Inc., had terminated an asylee in violation of the INA through document abuse. The complaint alleged that upon expiration of the complainant's employment authorization, Triangle refused to accept other legally acceptable documentation. At the same time, Triangle accepted such documents as proof of qualification from United States citizens. Triangle agreed to pay a $1,100 civil penalty and $14,400 in back pay and benefits, and also agreed to provide training and post notices regarding employees rights.

In March 2003, OSC reached a settlement agreement resolving a complaint that the respondent discharged and replaced four United States citizens with non-citizens on the belief that non-citizens would be harder working, more dependable, and less prone to complaining about working conditions. DDI agreed to pay $18,000 in back pay, a $1,000 civil penalty, and to advertise positions publicly in the future.

Overall, over the past three years, OSC has secured $1,302,700 in civil penalties and damages. This compares favorably with the $1,075,100 recovered over the prior three years. The Office of Special Counsel also continues its more informal efforts to resolve disputes, having received 18,580 calls to its hotline in 2003, and handled 194 telephone interventions into disputes. Both figures comport with the Section's historical activity levels.

HOUSING AND CIVIL ENFORCEMENT

We have taken a strong stance against sex discrimination—often in the form of sexual harassment—in the provision of housing. All too frequently we see unscrupulous landlords prey on needy tenants, obliging them to suffer sexual harassment, if not to outright acquiesce in sexual acts, on threat of eviction or other adverse housing actions. This Administration has filed six lawsuits in five States challenging such conduct. These have been resolved both through consent decrees and litigation, and we consistently secure significant monetary damages and penalties, as well as injunctions against violators' continued involvement with property management. Last year, we took one such case to trial and were vindicated with a jury verdict in the amount of $451,208 against a landlord who harassed at least 22 female tenants.

Equally important is the provision of accessible housing to Americans with disabilities. I discussed previously our efforts enforcing the requirements of the Fair Housing Act, along with the ADA, that certain housing units and common spaces be accessible.

The Housing and Civil Enforcement Section has responsibilities beyond the housing arena. One other area of particular note is our work under the Equal Credit Opportunity Act, pursuing "redlining," the practice of declining to locate or lend in an area based on the race of its inhabitants, and other discriminatory lending practices.

In 2003, we resolved a significant redlining suit against Mid America Bank in Chicago, Illinois. We alleged that the bank redlined predominantly African American and Hispanic portions of the greater Chicago area. In settling the lawsuit, the bank agreed to open two new branches in these areas, to undertake outreach and education programs there, and to provide $10 million in subsidized loans to qualified residents over a five-year period.

At present, I have authorized two additional redlining suits, and we have a number of similar cases under preliminary investigation. We also have opened several active investigations into allegations of racially discriminatory auto lending, and are monitoring private lawsuits raising similar claims.

The Housing and Civil Enforcement Section has also been actively enforcing RLUIPA—the Religious Land Use and Institutionalized Persons Act of 2000. RLUIPA prohibits States and municipalities from discriminating on the basis of religion, from treating religious assemblies less equally than non-religious assemblies, and from imposing a substantial burden on the exercise of religion absent a compelling governmental interest and narrow tailoring.

Since November 2001, the Administration has opened 15 formal investigations into allegations of religious discrimination in the land-use context. For example, in West Mifflin, PA, we assisted a predominantly Black Baptist congregation that had purchased a church from a predominantly white Baptist congregation. The black congregation was denied an occupancy permit. After we sent a letter opening our investigation, the town issued the permit.

We have filed one lawsuit under RLUIPA, *United States* v. *Maui*, in which we are challenging a County Planning Commission's decision to deny the Hale O Kaula Church permission to use agricultural land for religious worship, and to construct a second floor on a building already owned by the Church. In December 2003, the District Court denied the County's motion to dismiss.

In January, I personally argued an RLUIPA appeal in the Eleventh Circuit Court of Appeals. In that case, Midrash Sephardi v. *Surfside*, the town's zoning ordinance prohibits religious assemblies from its commercial district, yet permits private clubs such as lions clubs and masonic lodges. We contend that such assemblies are comparable, and thus are entitled to equal treatment.

EDUCATIONAL OPPORTUNITIES

The Educational Opportunities Section bears responsibility for overseeing compliance with approximately 360 consent decrees, settlement agreements, and court orders in primary, secondary, and higher education school desegregation cases. Some of these cases are decades old. Under this Administration, the Section has started to review this docket to determine in which, if any, additional relief is necessary, or whether a district is an appropriate candidate for unitary status.

Last year saw the successful agreement of unitary status and dismissal of one of the longest running school desegregation suits in the nation, *Davis* v. *East Baton Rouge Parish School System*. The school system agreed to fund a number of additional magnet programs and other educational opportunities for African American students, and the litigation was dismissed with prejudice. But not every case warranted unitary status. We have obtained or filed for additional relief in a number of school districts where the problems to be remedied by the original consent decree persisted.

The Education Section continues to focus on discrimination in education on the basis of language. The Equal Educational Opportunities Act of 1974 (EEOA) requires school systems to overcome language barriers that impede students' ability to learn and function in English. We recently reached agreements to improve the programs created to implement the EEOA in Bound Brook and Plainfield, New Jersey, and are investigating a number of schools and school systems in several States for their possible failure to meet their EEOA obligations. In one case, for example, we have authorized suit (and are currently engaged in active pre-suit negotiations) against a school that failed to provide adequate language instruction to numerous non-English speaking Asian students, placing them in classes taught in a different Asian language. We further allege that this school condoned the verbal and physical abuse of Asians by other students.

We continue to enforce Title IX actively, both at the trial and appellate levels. We have participated both as a party and as an *amicus* in Title IX cases involving discrimination in athletics and in-school harassment. Our amicus briefs have supported the right of individuals to file a private right of action under Title IX for claims of retaliation, and have defended the constitutionality of applying Title IX to the States. We also currently are investigating allegations that a high school employee physically and verbally harassed female students over several years with the school district's knowledge, in violation of Title IX's guarantee.

The Educational Opportunities Section also has been actively addressing discrimination on the basis of religion in the educational context. It has opened several investigations into allegations of discrimination against the wearing of headscarves by female Muslim students. We have filed several amicus briefs challenging religious discrimination. In two cases, for example, we defended the right of clubs to distribute religious messages on the same terms as other students could distribute secular messages; and in two others, we defended the right of religious groups to have equal access to, and equal use of, school property as secular groups. We also participated in a case where students in a Massachusetts high school were suspended for

distributing candy canes at Christmas with a note that explained the religious significance of the candy cane and a prayer. Our amicus brief noted that that the school had engaged in viewpoint-based discrimination against religion in violation of the First and Fourteenth Amendments—a position also supported by the American Civil Liberties Union in a brief supporting the students. The district court agreed with us in a 62-page opinion.

COORDINATION AND REVIEW

As I noted earlier, a central focus of this Administration has been expanding access to public services for language minorities. Most individuals living in the United States read, write, speak, and understand English. For many though, English is not their primary language. The 2000 census identified over 26 million who speak Spanish, and seven million who speak an Asian language, at home. Anyone having a limited ability to speak, read, write, or understand English falls in the category of "Limited English Proficient," or LEP.

Being LEP can be a barrier to access to public services and benefits, and often bars participation in the very tools made available to enhance English language ability and civic participation, such as schools and voting. Accordingly, the Federal government has committed to making its services accessible to LEP individuals.

In addition, our Coordination and Review Section's (COR) developed the Department's "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons." The Guidance implemented Executive Oder 13166, which mandated LEP accessibility, which along with Title VI regulations, requires that Federal as well as federally funded programs and services provide meaningful access to LEP individuals.

Coordination and Review is responsible for enforcing non-discrimination requirements in Department-funded programs. COR currently has 23 open LEP complaints that it is investigating, under a Memorandum of Understanding with the Office of Justice Programs. In addition, COR assists other agencies in enforcing Executive Order 13166 by providing technical assistance upon request, both to Federal funding agencies that must ensure compliance by their recipients and to all Federal agencies that must ensure that their own federally conducted programs are accessible to LEP individuals. For example, COR has spent substantial time assisting the Bureau of Indian Affairs of the Department of Interior, including on-site assistance, in its investigation of allegations that only English is offered to LEP students on an Indian Reservation in Arizona.

We have increased the size of the Coordination and Review Section to expand its ability to provide training sessions and technical assistance regarding meaningful linguistic access, and to continue administrative enforcement of Title VI/LEP requirements.

Coordination and Review currently has eleven open formal investigations, with a number of additional inquiries under way. COR is also in the process of developing a training video on the LEP initiative and how to address "language negatives." Moreover, we are printing our beneficiary and recipient/federal agency brochures in nine languages: English, Spanish, Chinese, Korean, Vietnamese, Russian, Cambodian, Arabic, Hmong, and Haitian Creole. Also, in June of 2002, we issued the Department's LEP Guidance for Recipients, which outlines how to achieve meaningful access by LEP persons to programs and activities receiving assistance from the Department of Justice. That Guidance has functioned as a template for similar guidance issued by other Federal agencies.

Of particular note, COR managed the development and adoption of the joint final "Cureton" rule, which established a uniform understanding among 22 participating agencies of the terms covered "program" and covered "program or activity," conforming to those enacted by the Civil Rights Restoration Act of 1987. This rule responded to doubts regarding Title VI regulations raised by a Third Circuit decision in *Cureton* v. *NCAA*.

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The President, less than one minute into his Inaugural Address, reminded this nation of a simple truth: "The grandest of [American] ideals is an unfolding American promise that everyone belongs, that everyone deserves a chance, that no insignificant person was ever born." He reminded us that, "[w]hile many of our citizens prosper, others doubt the promise, even the justice, of our own country. The ambitions of some Americans are limited by failing schools and hidden prejudice and the circumstances of their birth."

The Civil Rights Division's charge is no less than helping ensure this grandest of American ideals of which the President spoke. There is no higher calling in gov-

ernment than ensuring that the law applies fairly and equally to all Americans. As the Attorney General has said, for those of us in public service, equal justice before the law is more than a mission—it is a sacred trust.

I hope that our shared opposition to prejudice and discrimination helps sets a stage for an open and productive dialogue.

I would again like to thank the Chairman, the Ranking Member, and the Committee for their time today and welcome any questions you may have.

Mr. CHABOT. And I will recognize myself for 5 minutes for the purpose of asking questions.

We appreciate your testimony here this afternoon, Mr. Assistant Attorney General.

Number one, it is my impression that the Division has been very aggressive in both its enforcement of the ADA and its efforts to educate Government entities and members of the private sector about the rights of individuals with disabilities. However, there is some concern that the Department is interpreting reasonable accommodation to mean wholly equivalent. Can you comment on the general principles the Department uses in its own investigations of potential ADA violations, and in defining the rights of individuals with disabilities in preemptive efforts? For example, what is the approach of the Department regarding stadium-style theaters, for example, the seating there?

Mr. ACOSTA. Certainly, Mr. Chairman. Reasonable accommodation has been defined—this is obviously a fact-specific inquiry. Courts throughout the Nation have looked at that term and have defined that term with reference to the facts of a case.

With respect to stadium-style seating, there is a regulation that covers that matter, and the Department has for many years now had a litigating position that makes clear that what we expect is a comparable line of sight. There has been litigation on this matter. Some plaintiffs have taken the position that seating, for example, in the front row is acceptable. One Federal judge called that "headache city," alluding, I would assume, to the angle, to the steep angle of view that an individual has in the front seat. We believe it is a comparable line of sight. We believe that is what is required.

Let me add this. We are very sensitive to the cost of compliance, and we are working with businesses to ensure both access and reductions in regulatory burden. As a quick example, we just signed an agreement with the State of Maryland whereby we certified the Maryland Building Code. We have the authority, if States submit a code, to review the code and to identify discrepancies between a local building code and Federal requirements. By bringing a code up to specification, Federal specification, all sides win. In Maryland now, every time a local inspector goes to inspect a building, once it is signed off by that local inspector, the builder knows that it is built rightly.

So we are very sensitive to vagueness issues, we are very sensitive to cost of compliance, and are working with States and localities to certify business codes so everyone knows what is expected of them.

Mr. CHABOT. Thank you very much.

Let me shift to another area. In your written testimony, you state that you have opened investigations of 39 nursing homes and mental health facilities and also jails for violating the constitutional rights of their patients or inmates.

What is the status of those investigations, and can you say whether you anticipate filing suits in any of them? And finally, how has the Division's approach to investigations under CRIPA changed since you have taken the lead?

Mr. ACOSTA. Certainly, Mr. Chairman.

As you alluded, we have opened 39 new investigations covering 46 facilities under the Civil Rights of Institutionalized Persons Act. In some cases, we have signed agreements, some very recently. In other cases we have found it necessary to litigate.

We have filed the first lawsuits under CRIPA in—quite honestly, I didn't know in how many years. I have asked my staff. They don't remember—the career staff does not remember the last time that a CRIPA lawsuit was filed, so several years. That concerned a center, a juvenile detention center, in Mississippi, where children are being hog-tied; where they are being pole-shackled; where they are placed around a pole, their arms are tied behind their back, and left on public display; where girls, suicidal girls, were stripped naked, left in a windowless room with only a drainpipe to serve as a toilet. We are litigating that case, and we will litigate it strongly.

One change that we have made under CRIPA is we are making very public our findings. The Division previously had not publicly—they were public, but they weren't widely circulated, the concerns with respect to certain facilities.

The reason we have done this is when a finding is made public, when public attention is called on a wrongdoing, not only do we fix the problem at that particular facility, but we set national standards. We make it clear not only to that facility, but to other facilities, that these types of actions are not constitutional and are not permitted. And so I feel very strongly that we need to disseminate our findings and make them quite public.

Mr. CHABOT. Thank you very much. My time has expired.

The gentleman from New York is recognized for 5 minutes.

Mr. NADLER. Thank you, Mr. Chairman.

Mr. Acosta, prior to this hearing, our staff has requested the dockets for each section of the Division. Do you have that material to share with us, or can you get it for us?

Mr. ACOSTA. Mr. Nadler, I believe that material was requested last week. It was——

Mr. NADLER. What?

Mr. ACOSTA. It was requested last week. It is quite voluminous, and we have not yet been able to compile it.

Mr. NADLER. But you will have it for us?

Mr. ACOSTA. If the Committee would like it, we are certainly willing to provide it.[2]

Mr. NADLER. Thank you very much.

Second, the Attorney General has announced that if passed and if upheld by the courts, the Civil Rights Division will be the Division charged with enforcing the so-called Partial-Birth Abortion Act. Now, first of all, whose civil rights will your division be enforcing in that case?

Mr. ACOSTA. Congressman, this Congress passed a statute——

Mr. NADLER. Well, the Senate hasn't passed it yet, have they?

[2]The material referred to was not available at the time this hearing was printed.

Mr. ACOSTA. Yes. This Congress passed the statute, it passed by a nearly two-thirds margin. It sets forth the elements of a crime. Our job is to enforce that statute against individuals who meet the elements of that crime.

Mr. NADLER. Okay. I won't press the subject.

The President's fiscal year 2005 budget has proposed cuts to the Civil Rights Division of $1.62 million and 15 full-time-equivalent positions. First of all, from where would these resources be drawn, especially in light of your presumed additional responsibilities to enforce the Partial-Birth Abortion Act?

Mr. ACOSTA. Certainly, Congressman. Since 2001, the Division has received budget increases providing us 52 additional spots. The President's budget calls for a budget increase of $300,000. Because of increased expenses, that will cause a net shortfall of 2.2 million, which has the effect, assuming no decreases, of reducing our FTE by 15.

I am working with the Administrative Section of the Civil Rights Division to look into this matter and to reduce expenditures, to streamline and make our process more efficient.

I have not examined where and from what sections and what enforcement responsibilities any reductions in FTEs would have to come. I will say this: We have received substantial budget increases, and I think that the budget is more than sufficient to allow us to satisfy our mission.

Mr. NADLER. That is interesting, because you said you are now examining all of that. So where did the figure come from? Was the figure just taken from some—in other words, the figure does not seem, from what you just said, to have been drawn from an analysis of what you need. I mean, it was drawn from some other source, the figure of the budget cut?

Mr. ACOSTA. Congressman, if I could. The budget allocation is increasing by 300,000. The expenditure side, however, because of salary increases, expected salary increases, and other expected increases is increasing by 2.5 million. That result will be a net shortfall of 2.2.

My understanding is that one way to address that net shortfall is to attrit 15 FTEs. That is not the sole way of addressing that shortfall, and our administrative staff is looking for other potentials as well.

Mr. NADLER. Mr. Attorney General, as part of its legal strategy to defend the constitutionality of the Partial-Birth Abortion Act, the Department of Justice has subpoenaed the records of women who had abortions and records of clinics and hospitals around the country in the last 2 years; that is, records covering the last 2 years. In those cases, the Department has argued there is no Federal common law doctor-patient privilege. Is that your understanding of current law? Do you believe that patient medical records should be entitled to no doctor-patient privilege whatsoever?

Mr. ACOSTA. Mr. Nadler, as you are aware, as part of this Congress's passage of the partial birth abortion ban, Congress held, I believe, 8 years of hearings and found that——

Mr. NADLER. Excuse me, but that isn't the question. The question is do you believe that there is no doctor-patient privilege on the Federal level with respect to these kinds of medical records?

Mr. ACOSTA. With respect to medical records, the plaintiffs have introduced these medical records into the case. The plaintiffs witnesses are relying on the medical records to disagree with Congress' finding that these procedures are medically necessary. The Department is seeking the same access to these medical records.

Mr. NADLER. For the same individuals?

Mr. ACOSTA. For the same individuals, making clear that we are not looking for any——

Mr. NADLER. Excuse me, but I thought the women are not parties to the case.

Mr. ACOSTA. The plaintiffs have——

Mr. NADLER. Let me simplify since we are running out of time.

Mr. CHABOT. The gentleman's time has expired. The gentleman is granted an additional minute.

Mr. NADLER. Thank you.

As a matter of law, do you believe that there is, or do you believe that there should be, a patient-doctor privilege at a Federal level for medical records, forgetting the question of partial birth abortion? Do you still think there is, and do you think that there should be if there isn't, a doctor-patient privilege?

Mr. ACOSTA. I haven't reviewed doctor-patient privilege, Mr. Nadler.

Mr. NADLER. Thank you.

I have one more question. The GAO is conducting a review at the request of Members of the Committee of reported voting irregularities. I understand that the GAO team has been encountering difficulty in getting timely responses from the Civil Rights Division to its requests for information and meetings as part of its effort to complete the study. They have not been encountering similar problems with other divisions in the Department, such as the Criminal Division. Requests take, on average, 4 weeks to fill, if not longer. This includes the requests for meetings, files, data runs on matters and cases initiated and copies of documents.

From what I understand, these problems are not restricted to this particular study. In addition to the delays in the production of materials and information, GAO analysts reported that each request must be made in writing, which has not been the practice in the past. Additionally, each request must undergo multiple layers of review within the Division before an answer is forthcoming or meeting set up.

While other divisions have used similar procedures, GAO has not experienced similar delays from other divisions within the Department.

GAO is an arm of Congress, and these requests should be treated as coming from Members themselves. Can you commit to me that you will take steps to ensure somewhat more timely cooperation with the GAO in its work?

Mr. ACOSTA. Congressman, absolutely.

Mr. CHABOT. The gentleman's time has expired.

The gentleman from Florida is recognized for 5 minutes.

Mr. FEENEY. Thank you, Mr. Chairman.

And, Mr. Acosta, I have two things that I am interested in, perhaps you would just comment on for me.

The Americans with Disability Act is full of great intentions and has really opened a lot of doors in a very literal way, excuse the pun. In some areas, though, it is being used by trial attorneys as a sword rather than a shield to protect people with disabilities. In my district, for example, small businesswomen and businessmen are visited by a trial lawyer who drives up somebody that has a physical handicap typically, and subsequently is hit with a, you know, multimillion-dollar, several-hundred-thousand-dollar lawsuit, which includes, of course, a plea for attorneys' fees.

There is a bill pending in Congress that actually would provide the operator of the hotel in that instance, or whatever the facility was, to remedy the problem as opposed to endow trial lawyers further in America. But I would like to know, have you expanded on your efforts to sort of ratify and certify State building codes and how that may help us continue access to people with disabilities without endowing the trial attorneys of America? Because my purpose would be the former as opposed to the latter.

And, secondly, I wonder if you could comment on the instances of downward departures in decisions where you have obtained a criminal sanction against an individual who is guilty of a civil rights violation as enacted by Congress. You mentioned one, the cross burning case.

The Rodney King case was a fairly famous example of our courts basically saying that higher courts could not use a *de novo* review, but had to basically submit to decisions by lower courts, even if they egregiously downwardly departed. And I thought maybe you might have some additional examples of instances where downward departures has hampered your ability to deter, through stiff penalties, people who are guilty of violent actions.

Mr. ACOSTA. Thank you, Congressman. Let me take the questions, if I could, in reverse order. With respect to the downward departures, I mentioned the cross burning case where the downward departure was from up to 2 years to time served. What I didn't mention was that the District Court judge in the record made comments along the lines of, "I may get reversed on this, and if I get reversed, well, I will deal with it then." And I mentioned that because I think it is relevant to be aware that some individuals may have that view.

I don't have, off the top of my head, instances of downward departures. If the Congressman would like, I am happy to review the records and submit.[3]

Mr. FEENEY. I would, if it is not too much trouble. There is no real urgency.

Mr. ACOSTA. Not at all.

With respect to the certification, I thank you for the question, because I think it is very important. Using Florida as an example, if Florida submits their building code, I have architects on my staff that will examine the code, identify discrepancies, and notify Florida of those discrepancies.

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[3] The material referred to was not available at the time this hearing was printed.

If Florida amends its code, a few things happen. One, builders, when they go to build it, can build it right the first time when it is cheaper to do so. Two, when State building inspectors inspect the building, they can point out any deficiencies or any problems. Three, a State builder's certification that the building is compliant with State building codes becomes prima facie evidence of compliance with the ADA, and therefore can be used to act as a shield against a frivolous lawsuit.

Mr. FEENEY. If I can quickly follow up on that. Suppose my building code has 1,000, you know, parts to it. Supposing 950 passed muster, but 50 are denied. If I am a private operator, and one of the 950 approved issues is raised against me, can I use that as a defense? In other words, do you have to ratify the whole code before a State is certified?

Mr. ACOSTA. Certainly, Congressman. Codes can be ratified in whole or in part. In the case of Florida, I believe at least parts of Florida's building code have been ratified. I don't know if the entire code has been ratified.

Five States have submitted their codes in whole or in part to the Civil Rights Division in the mid-1990's for certification. Subsequent to that Maryland has now submitted their code, along with North Carolina and New Jersey, and several other States.

The only parts that can be used as an affirmative defense are those parts that we have certified.

Mr. FEENEY. Thank you.

Mr. CHABOT. The gentleman's time has expired.

The gentleman from Michigan is recognized for 5 minutes.

Mr. CONYERS. Thank you, Mr. Chairman.

Mr. Acosta, how many times have you recused yourself in the course of your being in charge of this Division?

Mr. ACOSTA. Congressman, I have recused myself twice.

Mr. CONYERS. And did you choose to give public reasons for that?

Mr. ACOSTA. Congressman, the Department has a long-standing policy, going back several years, in which we do not disclose the reasons why an individual may choose to recuse himself or herself.

Mr. CONYERS. Well, are you from Texas?

Mr. ACOSTA. I am not from Texas, Congressman.

Mr. CONYERS. Well, then what—what are we to draw from one of the most—both cases were important, but in one of the most novel and far-reaching attempts to redistrict congressional seats, you were not there, but, even worse, it was left at the hands of political appointees.

Mr. ACOSTA. Congressman, I understand your concern. I—let me say this. You mentioned earlier that—I believe you characterized it as I fled from that decision.

Mr. CONYERS. Fled. Yes.

Mr. ACOSTA. Yes. Thank you. I believed, and I do believe, that my recusal was appropriate, that it was the right thing for me to do. I have very able deputies, good deputies, and I have full confidence in their decision-making process.

Mr. CONYERS. Did you say that you are prevented from giving reasons for why you would recuse yourself?

Mr. ACOSTA. Congressman, the Department's policy is that it does not provide the reasons why a recusal decision is made.

Mr. CONYERS. It says you may decide not to give reasons for a recusal. It doesn't say that you can't.

Mr. ACOSTA. My understanding, having discussed this with the appropriate individuals in the Department, is the Department's policy is that it does not provide reasons why a recusal decision is made.

Mr. CONYERS. Well, let me ask you about the pattern and practice part of this thing. We are having a retrenchment in the area of pattern and practice enforcement under 14141, because the agreements lack substantial compliance requirements. So the teeth are taken out of them. And that is contrary to previous practices.

Why have you departed from the 5-year consent decree with 2 years substantial compliance model that was followed in the past? For example, in Cincinnati, where there was a great deal of violence, in that agreement there is no requirement for substantial compliance in the agreement. This is a clear march backwards.

Mr. ACOSTA. Congressman, if I could. I believe that we have a rather strong record with respect to pattern and practice. In the 3 years preceding this Administration, there were, I believe, three pattern of practice agreements reached.

Since 2001, we have reached 13 pattern and practice agreements. And to go into the details of those agreements, four of them, I believe, are consent decrees. Nine of them are MOUs. Whether they be consent decrees or MOUs, they have monitors, they require compliance. They are strong agreements.

Now, you may be alluding to a question that was raised recently where the question is: Why does the agreement have a termination date? And the answer is this: In all our systems of laws, we do not put someone under—we do not put someone, for example, in jail indefinitely. There is typically a term. Our agreements do have a term. But it is important to recognize, and I have said this publicly, I have said this with respect to the Prince George's consent decree that does have a date certain termination date, just because an agreement terminates does not mean that we are out of the picture.

We have every authority to reopen a case. We have every authority to bring another 14141 action. All we are saying is that upon termination, if there are additional issues, it is up to the United States to continue meeting the burden of proving that, in fact, there are additional issues.

Mr. CHABOT. The gentleman's time has expired.

The gentleman from Virginia is recognized for 5 minutes.

Mr. SCOTT. Thank you.

Thank you, Mr. Acosta. Mr. Acosta, in my jurisdiction, near my jurisdiction, there have been a rash of cross burnings—excuse me, of church burnings. In the prior Administration, a task force was formed, and for the proper response, the ATF has responded, I think, in a very timely manner to the recent church burnings. Is the Civil Rights Division also involved?

Mr. ACOSTA. Congressman, I would have to look at the specific case. We are involved in several church burnings. I would be happy to get back to you with specifics.

Mr. SCOTT. The ATF has been extremely helpful in that.

Let me ask a couple of questions on preclearance. The *Georgia* v. *Ashcroft* decision, do I understand the standard measure for the—on the question of dilution is whether or not the minority community is worse off than it was before the change; the change would be—make the minority community worse off. Whether the new policy is discriminatory or not, if the minority community is worse off, then it should not be precleared. Do I understand that right?

Mr. ACOSTA. Congressman, the standard is whether or not there is retrogression, which can be easily termed as whether or not the minority community is worse off.

Real quick, if I could, on the church burning issue. I will go back and look at it, because, like cross burnings, church burnings are something we take very seriously. And you do have my commitment that we will take a look at those cases if we can.

Mr. SCOTT. Okay. Do influence districts count on measuring dilution?

Mr. ACOSTA. The Congressman is referring to the Supreme Court's recent decision, where the Supreme Court said that there are a few ways to look at retrogression. One is whether the district itself has retrogressed, and if so, whether there is an offsetting district. But a second way of looking at that is with respect to influence districts. So, yes, the Supreme Court has, in fact, said that influence districts are a factor that we have to consider.

Mr. SCOTT. Did you agree to release the—on the Texas case, the professional report that was done, the report that was done by the professional employees at the Civil Rights Division?

Mr. ACOSTA. Congressman, I have no authority to agree or disagree. I am recused on that case.

Mr. SCOTT. I mean, the report itself. Can that be released, the work done by the professional staff?

Mr. ACOSTA. With respect to the Texas case, again, I am recused on that case, so I cannot direct staff to release or not release. I cannot become involved with that case or matters arising from that.

Mr. SCOTT. Where is the document now?

Mr. ACOSTA. Congressman, I—I am recused. I don't know. I don't know what the details of that case are.

Mr. SCOTT. Who would know where the document is now?

Mr. ACOSTA. My principal deputy, sir.

Mr. SCOTT. Who is that?

Mr. ACOSTA. Sheldon Bradshaw.

Mr. SCOTT. Can we get a question to him as to whether or not he would authorize the release of the document?

Mr. ACOSTA. I assume that Legislative Affairs that is here is happy to relay that question.

Mr. SCOTT. Under the faith-based initiative, as you are aware, sponsors of federally funded programs that claim to be religious faith-based can discriminate in employment based on religion. And as you know, if you can discriminate based on religion, you can discriminate based on race. Was the Civil Rights Division consulted in coming—in coming to that conclusion and adopting that position?

Mr. ACOSTA. Congressman, I would—as you are aware, I have been with the Civil Rights Division for a few months now.

Mr. SCOTT. What would the Civil Rights Division's position be on the question of whether or not you ought to defend the House-passed Head Start bill that includes a provision that you can tell a teacher, prospective teacher, that you would have gotten the job, but we don't hire people of your religion, or we don't hire people that belong to your church? What would be the Civil Rights Division's position on that situation?

Mr. ACOSTA. If I could, two things. One, I was about to say that there is a process within the Department where all divisions are typically consulted on a matter such as that. So I assume the Division was, in fact, consulted.

With respect to the specific provision, you know, as—any lawyer would, I would like to take a look at the provision before opining as to a position.

Mr. SCOTT. Could I have an additional 30 seconds?

Mr. CHABOT. The gentleman's time is expired. He is given an additional minute.

Mr. SCOTT. Thank you.

The House-passed bill on Head Start allows the discrimination. What is—does the Civil Rights Division have a position on whether or not teachers ought to be—whether or not you ought to be able to tell a prospective teacher that you would have gotten the job, but you are the wrong religion, or you belong to the wrong church, or our church has a contract, and we only hire our own? Does the Civil Rights Division have a position on that kind of discrimination?

Mr. ACOSTA. Congressman, the Department has an obligation, and, in fact, does defend actions of this Congress so long as a constitutional—a reasonable constitutional argument can be made. The Department reaches those as a whole. I couldn't get more specific without——

Mr. SCOTT. So you would—in terms of giving us—do you ever give advice, take a position? Do you like that, the idea that you could tell a prospective teacher——

Mr. ACOSTA. Congressman, again, I assume if this Congress passed it, that it is constitutional, and it would be our obligation to——

Mr. SCOTT. Let me talk about the confusion for a second. Can you directly fund a church in sponsoring a program?

[2 p.m.]

Mr. ACOSTA. Can a church be directly funded by the Federal Government?

Mr. SCOTT. Right. Can First Baptist Church as a church run a Head Start program? Not the 501(c)(3), but directly fund the church; thinking of the Cleveland voucher case, can you directly fund a church?

Mr. ACOSTA. Congress plans these issues—certainly the Establishment Clause prohibits funding of religion, but these issues arecomplex. They have gone all the way up to the Supreme Court at times. I would need to take a look at it.

Mr. CHABOT. The gentleman from North Carolina is recognized for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman.

Mr. Attorney General, can you describe for me briefly or generally what the Civil Rights Division does under section 5 of the Voting Rights Act?

Mr. ACOSTA. Certainly, sir. Section 5 of the Voting Rights Act requires covered jurisdictions, there are a few, over a dozen covered jurisdictions, to submit any changes in voting in districts. We have received since 2000, I believe, over 14,000 such submissions. They are reviewed for whether or not they have—whether they are retrogressive in intent or in effect.

Mr. WATT. Of those 14,000 that you have received, how many has the Division said were unacceptable under the law?

Mr. ACOSTA. I believe that we have objected to 39 in comparison to 13,000 submissions during the prior 3 years, with 29 objections during the prior 3 years.

Mr. WATT. Okay. In those 39 cases, I presume the Voting Rights Division or your Division has concluded that something improper has taken place, and it would have some discriminatory impact on minority citizens?

Mr. ACOSTA. We have concluded that there would be retrogression intentionally or that the effect would be retrogressive.

Mr. WATT. And based on that, would you have an opinion as to whether discrimination or adverse impact on minority voters is continuing in the jurisdictions that are currently covered under section 5?

Mr. ACOSTA. Certainly whether or not—well, let me rephrase. It is difficult to say. I am not aware of any legislature that intentionally is looking to discriminate.

Mr. WATT. I didn't ask you about intentional. I asked you about whether they were continuing to violate the law.

Mr. ACOSTA. In at least 39 cases the plans were, according to our Division, retrogressive.

Mr. WATT. Do you have an opinion as to whether, if the section 5 preclearance requirement were not in effect—well, let me phrase the question a little bit differently. Do you have an opinion whether the existence of the preclearance requirement is an important factor that is considered by those covered jurisdictions in the adoption of plans? Is that something in your experience those jurisdictions take into account to try to make sure that they go out of their way not to send up a plan that would be rejected by your Division?

Mr. ACOSTA. Allow me to make this easy. Yes. And the jurisdictions themselves, if one were to look at the amount of money spent on attorneys that are expert in section 5, obviously they do consider it because they spend substantial sums on this matter.

Mr. WATT. All right. I am just—I am trying to avoid keeping from having you express an opinion on a matter that is our legislative prerogative, the ultimate question of whether section 5 of the Voting Rights Act should be reauthorized in 2007. I think that is a legislative judgment. But I also think—I do think it is important for us to have the factual information that would allow us to do a thorough evaluation of that issue. And so I guess my question to you is not whether we should make the decision to or not to do, my question would be whether you believe section 5 serves a valuable purpose at present.

Mr. ACOSTA. Certainly, Congressman. Section 5 historically has served a valid purpose. And certainly in those States that are covered by section 5, the existence of section 5 has an impact on the redistricting process.

Mr. WATT. Might I ask unanimous consent for 1 additional minute, Mr. Chairman?

Mr. CHABOT. Yes. The gentleman is recognized for an additional minute.

Mr. WATT. Is it your Division's intention to engage with the Administration in an evaluation of whether section 5 should be reauthorized, and, if so, what do you expect to be your recommendation?

Mr. ACOSTA. Certainly that is a dialogue in which the Civil Rights Division will be involved. My recommendation, obviously, is one that I would give to the Attorney General in the first instance. Let me say this——

Mr. WATT. Has the evaluation already started, or has there been any preliminary discussion up to this point?

Mr. ACOSTA. I have been aware of this issue since this summer when I was asked about it during my confirmation hearings. And if I could, it is interesting because this Friday I am going to be going to Selma, and as you are aware, it was the march across Pettus Bridge that I guess predated the enactment of the Voting Rights Act by 3 weeks. It was an historic event. And the act is an important act that has historically had impact on the redistricting process.

Mr. WATT. I thank the gentleman for his comments. And I would just say in conclusion, Mr. Chairman, that I hope your experience in Selma is as powerful as the one that you testified about where you said in your opening statement, I think this is what you said, I thought I understood what human trafficking was about, but then when I saw it firsthand, there are some of us who understand voting rights discrimination and employment discrimination and these kinds of discriminations firsthand. And so I applaud you for taking steps that would give you those kind of personal experiences rather than just approaching these things in a theoretical way, because what always appears theoretically from the outside is not always what is happening in the inside. Thank you very much.

Mr. CHABOT. The gentleman's time has expired. Mr. Acosta, thank you very much for your testimony here this afternoon.

The gentleman from New York is recognized.

Mr. NADLER. Mr. Chairman, I ask unanimous consent that all Members have 5 legislative days to revise and extend their remarks and to submit additional materials for the record. And I also think we said additional questions.

Mr. CHABOT. Yes. Without objection, so ordered.

And if there is no further business to come before the Committee, we are adjourned.

[Whereupon, at 3:08 p.m., the Subcommittee was adjourned.]

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